

**IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR**

**BEFORE**

**HON'BLE SMT. JUSTICE ANJULI PALO**

**ON THE 19th MAY, 2022**

**CRIMINAL APPEAL No. 996 of 2018**

**Between:-**

**MOHD. ASHRAF S/O MODH. KAZIM KHAN,  
AGED ABOUT 22 YEARS, R/O H.NO. 2555,  
INFRONT OF DR. BATALIYA MASOOM KA BADA,  
OMTI P.S OMTI, JABALPUR (MADHYA PRADESH)**

**.....APPELLANT**

***(BY MR. MANISH KUMAR SONI – ADVOCATE FOR THE APPELLANT )***

**AND**

**THE STATE OF MADHYA PRADESH THROUH P.S HANUMANTAL  
JABALPUR (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY MR. DINESH PRASAD PATEL – PANEL LAWYER FOR THE RESPONDENT)***

.....  
**Reserved on :- 28.04.2022**

**Delivered on :-19.05.2022**  
.....

*This appeal coming on for final hearing this day, the Court passed the following:*

**J U D G M E N T**

This criminal appeal has been filed under Section 374(2) of the Code of Criminal Procedure by the appellant/accused being aggrieved by the

judgment dated 28.08.2017 passed by Xth Special Judge, (POCSO) Act, Jabalpur (M.P.) in Special S.T. No.78/2016.

2. Appellant has been convicted and sentenced as under :-

<b>Section/Act</b>	<b>Sentence</b>	<b>Fine amount</b>	<b>In default of fine</b>
363 of the I.P.C.	R.I. for 5 years	Rs.1,000/-	1 Month R.I.
366 of the I.P.C.	R.I. for 7 years	Rs.2,000/-	2 Month R.I.
376(2)(I) of the I.P.C.	R.I. for 10 years	Rs.5,000/-	3 Month R.I.
376(2)(N) of the I.P.C.	R.I. for 10 years	Rs.5,000/-	3 Month R.I.
6 of POCSO Act	R.I. for 10 years	Rs.5,000/-	3 Month R.I.

3. As per prosecution case, the prosecutrix was aged about 14 years at the time of incident. Her father lodged missing report on 08.02.2016 at Police Station - Hanumantal against unknown person stating that in the morning around 11:45 am the prosecutrix went to school and about 03:30 pm he came to know that her daughter was not present in the school and some unknown person abducted her. Police registered missing report and investigated the matter. On 17.02.2016, the prosecutrix was recovered from the possession of the appellant and one Shahjad @ Goldy Khan. It was also came on record that they visited several places namely Bargi, Nagpur and Bilaspur. It is alleged that appellant has committed rape with the

prosecutrix, therefore, Police registered aforesaid offences against the appellant and, after completion of investigation, charge-sheet has been filed against the appellant before the Competent Court.

4. Learned counsel for the appellant submitted that the appellant is innocent and when he refused to perform Nikah with the prosecutrix then false report has been lodged by the parents of the prosecutrix against the appellant. It is further contended that Dr. Indumati Vishwakarma (PW-1) has clearly deposed that no definite opinion can be given regarding intercourse, therefore, it is prayed to acquit the appellate from the aforesaid offences.

5. Learned Panel Lawyer for the State has supported the findings given by the trial Court and submitted that judgment given by the trial Court is based on proper appreciation of evidence on record.

6. I have heard both the counsel for the parties at length, perused the impugned judgment, evidence and other material on record, the learned trial Court convicted the appellant under the aforesaid offences on the basis of testimony of the prosecutrix. Her date of birth was 03.01.2002 and the incident took place on 08.02.2016. The prosecutrix stated that on the date of incident, the appellant and one Ashra Rehmani took her to the shop and

there she consumed some food item and then they went to Bargi along with Shahjad Khan, thereafter, they took her to Nagpur and stayed in Hotel then proceeded to Katni, Umaria, Birsinghpur Pali, Amlai and Bilaspur. The prosecutrix visited several places with the appellant without permission and information of her parents. During that time, the appellant committed rape with her several time. On 17.02.2016 her parents reached to Bilaspur and they brought her back to Jabalpur then the Police prepared Recovery Memo (Exhibit P-2) and recorded her statement (Exhibit P-3).

7. On the basis of statement of mother of the prosecutrix (PW-4) and birth certificate (Exhibit P-5), the trial Court rightly came to the conclusion that at the time of incident she was minor and aged about 14 years.

8. In her medical examination, Dr. Indumati Vishwakarma (PW-1) found her hymen ruptured with irregular margins, thus medical report supported the testimony of the prosecutrix. The Doctor prepared vaginal slide of prosecutrix. As per FSL, sperm were not present but from the MLC report it is duly proved that the prosecutrix is subject to sexual intercourse.

9. Learned counsel for the appellant contended that prosecutrix was consenting party, but as per law, her consent has no value because she was minor and below 18 years of age. The contention of learned counsel for the

appellant is also that the prosecutrix wants to marry with the appellant and when he refused to marry her, the complainant party has lodged false report against him but looking to the statements of the prosecutrix and her parents, this defence of the appellant cannot be accepted because no parents would do so for simple reason that it would bring down their own social status in the society apart from ruining the future prospect of their own child. Generally, in the cases of rape, the victim and her family members find it difficult to go and lodge a report at Police Station due to shame and fear of defamation in the society.

**10.** In the opinion of this Court, there is no material contradictions and omissions on record in the testimony of the prosecutrix and the trial Court has rightly convicted the appellant for the offences under Sections 363, 366, 376 (2)(I), 376 (2)(N) of IPC & Section 6 of POCSO Act and awarded proper sentenced as mentioned in the judgment. The findings recorded by the trial Court are based on proper appreciation of the evidence available on record and, therefore, under the appellate jurisdiction of this Court it cannot be interfered with.

**11.** Learned counsel for the appellant submitted that appellant has served sentence of about 5 years. He was in custody since 18.02.2016 to 27.07.2017, thereafter from 28.07.2017 to 21.09.2019. According to the

report of the Central Jail, Jabalpur appellant has served actual sentence of about 3 years 8 months and 4 days, which is not appropriate to release the appellant for undergone period.

**12.** Thus, in view of the foregoing discussion, the judgment and sentence passed by the trial Court is hereby upheld. This appeal being devoid of any merit, is hereby *dismissed*.

**13.** Let a copy of this judgment along with the record be sent back to the learned trial Court for communication.

**(SMT. ANJULI PALO)**  
**JUDGE**